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PUBLIC SERVICE
COMMISSION

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October 6, 2008

VIA HAND DELIVERY

Stephanie L. Stumbo
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RE: *An Examination of the Application of the Fuel Adjustment Clause of Louisville Gas and Electric Company From November 1, 2007 Through April 30, 2008*
Case No. 2008-00286

Dear Ms. Stumbo:

Enclosed please find and accept for filing the original and ten copies of Louisville Gas and Electric Company's Petition For Approval to Deviate From Rule in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me in the enclosed self-addressed stamped envelope.

Should you have any questions please contact me at your convenience.

Yours very truly,

W. Duncan Crosby III

WDC:ec
Enclosures
cc: Parties of Record

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION OF THE APPLICATION OF)	
THE FUEL ADJUSTMENT CLAUSE OF)	
LOUISVILLE GAS AND ELECTRIC COMPANY)	CASE NO. 2008-00286
FROM NOVEMBER 1, 2007 THROUGH)	
APRIL 30, 2008)	

PETITION FOR APPROVAL TO DEVIATE FROM RULE

Louisville Gas and Electric Company (“LG&E”) petitions the Kentucky Public Service Commission (“Commission”) to grant LG&E approval, pursuant to 807 KAR 5:011 § 14, to deviate from the Notice of Public Hearing requirement¹ in the above-captioned proceeding because LG&E has substantially complied with the Commission’s regulation. In support of this petition, LG&E states as follows:

1. Pursuant to KRS 424.200, newspaper publication of rate change hearings must be in accordance with the Commission’s regulations.
2. The Commission’s regulations prescribe that newspaper publication of a rate change hearing must occur in a newspaper of general circulation in the areas to be affected “one time not less than seven nor more than twenty-one days prior to the hearing.” 807 KAR 5:011 § 8 (5).
3. The purpose of the Commission’s rate change notice regulations is to ensure that members of the public have sufficient notice and a meaningful opportunity to participate, individually or through representative agencies, in this proceeding. As stated by the Kentucky Supreme Court:

¹ 807 KAR 5:011 § 8 (5).

Substantial compliance in regard to publication requirements has been authorized. The purpose of the statute is to allow the public an ample opportunity to become sufficiently informed on the public question involved.²

Publication of Notice

4. On August 22, 2008, the Commission ordered LG&E to submit to an examination on the application of its fuel adjustment clause (“FAC”) from November 1, 2007 through April 30, 2008. The hearing will be held on October 7, 2008.

5. In accordance with the Commission’s notice regulations, on September 22, 2008, LG&E contacted the Kentucky Press Association to arrange for a Notice of Public Hearing to be published, prior to September 30, 2008, in 20 newspapers in LG&E’s service areas.

6. LG&E’s efforts notwithstanding, timely published notice was provided throughout the vast majority of LG&E’s service territory including the newspaper of greatest circulation in the Commonwealth and in all of LG&E’s service area, the *Louisville Courier-Journal*. Only one newspaper did not publish notice prior to September 30, 2008, *The Springfield Sun*, published in Springfield, Kentucky and serving Washington County, which set publication for October 1, 2008, one day outside of the “not less than seven (7)... days prior to the hearing” requirement. *The Springfield Sun* did, however, publish timely notice on behalf of Kentucky Utilities in Case No. 2008-00285, the sister FAC proceeding to this proceeding.

Request for Deviation from Rule

7. In view of the timely published notice LG&E has provided throughout the vast majority of the newspapers in its service territory, including the newspaper of greatest circulation in the Commonwealth and all of LG&E’s service area, the *Louisville Courier-Journal*, LG&E

² *Conrad v Lexington-Fayette Urban County Government*, 659 S.W.2d 190, 195 (1983) (citing *Queenan v. City of Louisville*, 233 S.W.2d 1010 (1950)). See also *Lyon v. County of Warren*, 325 S.W.2d 302 (1959) (publishing notice of bond referendum outside statutory time limits, accompanied by media attention and other means, held sufficient notice to public).

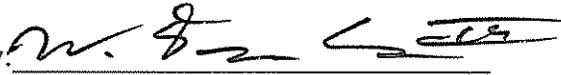
respectfully requests a deviation from the Commission's Notice of Public Hearing regulation with respect to the one instance of non-conformity cited above. Every paper, whether the legally required paper or not, published timely notice with the exception of one, which published one day outside of the rule. Further, the outlying newspaper published notice of Kentucky Utilities Company's FAC hearing in Case No. 2008-00285, the sister proceeding to this one. As noted at the beginning of this Petition, the Kentucky Supreme Court has stated, "Substantial compliance in regard to publication requirements has been authorized. The purpose of the statute is to allow the public an ample opportunity to become sufficiently informed on the public question involved."³ LG&E respectfully submits that it has substantially complied with the requirements of 807 KAR 5:011 § 8 (5), therefore achieving the purpose of the regulation, namely ensuring that the public has sufficient notice of the proceeding and a meaningful opportunity to participate, individually or through representative agencies. LG&E therefore respectfully requests the Commission to grant a deviation from its Notice of Public Hearing regulation, deeming LG&E's substantial compliance to be sufficient compliance with the regulation in this proceeding.

WHEREFORE, Louisville Gas and Electric Company respectfully requests that, pursuant to 807 KAR 5:011 § 14, the Commission grant a deviation from its Notice of Public Hearing regulation, deeming LG&E's substantial compliance to be sufficient compliance with the regulation in this proceeding.

³ *Conrad v. Lexington-Fayette Urban County Government*, 659 S.W.2d 190, 195 (1983) (citing *Queenan v. City of Louisville*, 233 S.W.2d 1010 (1950)). See also *Lyon v. County of Warren*, 325 S.W.2d 302 (1959) (publishing notice of bond referendum outside statutory time limits, accompanied by media attention and other means, held sufficient notice to public).

Dated: October 6, 2008

Respectfully submitted,

By: 

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E.ON U.S. LLC
220 West Main Street
Louisville, Kentucky 40202

Counsel for Louisville Gas
and Electric Company

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition for Approval to Deviate from Rule was served via U.S. mail, first-class, postage prepaid, this 6th day of October 2008, upon the following persons:

Dennis G. Howard II
Assistant Attorney General
Office of the Kentucky Attorney General
Office of Rate Intervention
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601-8204

Michael L. Kurtz
Boehm Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, Ohio 45202



Counsel for Louisville Gas and Electric Company

EXHIBIT 1

NOTARIZED PROOF OF PUBLICATION

COMMONWEALTH OF KENTUCKY

COUNTY OF Franklin

Before me, a Notary Public, in and for said county and state, this 2nd day of October, 2008, came RACHEL MCCARTY, personally known to me, who, being duly sworn, states as follows: that she is the Advertising Assistant of the Kentucky Press Service, Inc.; that she has personal knowledge of the contents of this affidavit; and that the publications included on the attached list published the Legal Notice in the form also attached at the request of Kentucky Press Service, Inc for Louisville Gas and Electric Company. Said Legal Notice pertains to the public hearing ordered by the Kentucky Public Service Commission in Case No. 2008-00286.

Rachel McCarty
Signature

Bonnie J. Howard
Notary Public
My Commission Expires: 9-18-12

(SEAL)

[Attachments: (1) List of Publications; (2) Sample Published Legal Notice]

KENTUCKY PRESS SERVICE

**101 Consumer Lane
(502) 223-8821**

**Frankfort, KY 40601
FAX (502) 875-2624**

Rachel McCarty Advertising Dept.

List of newspapers running the Notice to Louisville Gas and Electric Company. Attached tearsheets provide proof of publication:

Bardstown KY Standard: 9-26
Bedford Trimble Banner: 9-24
Brandenburg Meade Co. Messenger: 9-24
Brandenburg News Standard: 9-26
Cave City Barren Co. Progress: 9-24
Edmonton Herald News: 9-24
Elizabethtown Hardin Co. Independent.: 9-25
Elizabethtown News Enterprise: 9-26
Glasgow Daily Times: 9-25
Greensburg Record Herald: 9-24
Hodgenville Larue Co. Herald News: 9-24
Lagrange Oldham Era: 9-25
Lebanon Enterprise: 9-24
Louisville Courier Journal: 9-26
Munfordville Hart Co. News Herald: 9-25
New Castle Henry Co. Local: 9-24
Shelbyville Sentinel News: 9-26
Shepherdsville Pioneer News: 9-24
Springfield Sun: 10-1
Taylorsville Spencer Magnet: 9-24

NOTICE OF PUBLIC HEARING

The Public Service Commission of Kentucky has issued an order on August 22, 2008 scheduling the hearing to be held on October 7, 2008 at 10:00 a.m. (Eastern Daylight time) in Hearing Room 1 of the Commission's offices located at 211 Sower Boulevard in Frankfort, Kentucky, for the purpose of cross-examining witnesses in Case No. 2008-00286 which is *An Examination of the Application of the Fuel Adjustment Clause of Louisville Gas and Electric Company from November 1, 2007 through April 30, 2008.*

Louisville Gas and Electric Company
220 West Main Street
Louisville, Kentucky 40202